AMENDED IN ASSEMBLY MAY 3, 1999

CALIFORNIA LEGISLATURE—1999-2000 REGULAR SESSION

ASSEMBLY BILL

No. 1504

Introduced by Assembly Member Margett

February 26, 1999

An act to add Section 7102.5 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1504, as amended, Margett. Public contract termination: cause *and notice requirements*.

Under existing law, the Director of General Services may terminate a contract after giving the contractor written notice of the defaults to be remedied. The director may terminate if the contractor has failed to provide an adequate work force or material of proper quality, has failed to comply with provisions relating to payment of subcontractors, or otherwise failed to meet contractual obligations. *The director also must give 5 days written notice of termination*.

This bill would provide that a public entity, defined to include local government entities, can terminate a contract only for the reasons discussed above, and by complying with the written notice requirements. The bill would also provide penalties for termination or attempted termination of contracts for other reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

AB 1504

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The people of the State of California do enact as follows:

SECTION 1. Section 7102.5 is added to the Public Contract Code, to read:

- 7102.5. (a) A public entity may terminate a contract 4 only for cause as defined in Section 10253 and only after the public entity gives the written notice required by that section.
 - (b) If a public entity terminates or attempts to terminate a contract without cause, the following shall
- (1) The contractor is deemed to have completed its 10 11 entire obligations under the contract.
- (2) All claims submitted by the contractor at the time 13 of the termination or attempted termination are deemed to be valid.
- (3) The entity is liable for payment for completion of 16 the contract and any claims described in paragraph (2).
- (1) The public entity shall make all scheduled progress 18 payments and shall pay for all work completed through the end of the five-day notice period, as well as all 20 approved additions to the original contract. 21 payments shall be made to the contractor within 10 days 22 of termination. Any payment not released by the public 23 entity within that period shall accrue a penalty of 2 24 percent for each succeeding 30-day period.
- (2) All claims submitted by the contractor through 26 and including the five-day notice period that are unresolved at the time of the termination shall be 28 submitted to a three-person arbitration panel pursuant to 29 the rules of the American Arbitration Association. The 30 panel's decision, which shall include assignment of 31 arbitration costs, shall be released within 30 days of the 32 completion of the hearing. Payments due under that 33 decision shall be made within 10 days of release of the 34 decision. Any payment not released by the public entity 35 within 11 days of the decision shall accrue a penalty of 2 36 percent for each succeeding 30-day period.
- (c) A contractor is entitled to all costs and attorney's 37 38 fees incurred in collecting payment under this section.

1 (d) Prior to any action to terminate a contract, the 2 public entity shall make a final decision regarding any 3 claims requesting an extension of time.